

IC 28-6.2-3

Chapter 3. Issuance of Stock

IC 28-6.2-3-1

Written approval before issuance; criteria for approval

Sec. 1. (a) A savings bank subsidiary of a mutual holding company, including a resulting or an acquiree savings bank, may not, directly or indirectly, issue stock to persons other than its mutual holding company parent without the prior written approval of the department.

(b) The department shall approve a proposed stock issuance plan upon determining that all of the following criteria are met:

(1) The plan:

(A) would provide the savings bank, its mutual holding company, and any other savings bank subsidiaries of the mutual holding company with sufficient capital; and

(B) would not be detrimental to the savings bank, its mutual holding company, members of the mutual holding company, or the interest of depositors of the savings bank.

(2) The proposed price or price range, the classification, and any terms or conditions of the stock to be issued are reasonable.

(3) The plan is approved by the members of the mutual holding company or, if the plan is part of a reorganization plan, by members of the reorganizing savings bank, at a meeting of the members of the mutual holding company or the reorganizing savings bank.

(c) In determining whether the criteria set forth in subsection (b) are met, the department may consider the following factors:

(1) The size, capital position, and quality of management of the savings bank.

(2) The business objective of the savings bank.

(3) The dollar amount and number of shares to be issued under the plan.

(4) The market conditions that may affect the plan.

(5) The existence of a trading market in, or methods of later resale or repurchase of, the stock to be issued under the plan.

(6) Any benefits provided to the savings bank through employee or director incentives.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-3-2

Proposed price of stock

Sec. 2. Each application for approval of a proposed stock issuance plan must state and explain the proposed sales price or the price range if an exact price cannot be determined. The application must do the following:

(1) Support the reasonableness of the proposed price or price range by independent persons who are experienced in corporate valuations.

(2) Indicate the basis for determination of the income to be

derived from the proceeds of the stock sale, demonstrate the appropriateness of the earnings multiple used, and include all assumptions regarding future earnings growth, if the proposed price or price range is based upon a capitalization of the projected income of the savings bank after the issuance of the stock. If the proposed price or price range is based upon a comparison of the stock of the savings bank with the issued and outstanding stock of other stock savings banks or similar institutions, those institutions must be reasonably comparable to the savings bank in terms of size, asset composition, market area, competitive conditions, profit history, expected future earnings, and other stated relevant factors.

(3) State the amount of the discount and explain how that discount was determined, if the proposed price or price range includes any discount due to the minority status of the stock to be offered.

(4) State any additional information about the pricing that the department may request.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-3-3

Representations regarding price of stock

Sec. 3. No representations may be made in any manner in connection with the offer or sale of any stock issued under this chapter that:

- (1) the price, price range, or any other pricing information related to a stock issuance has been approved by the department;
- (2) the stock has been approved by the department; or
- (3) the department has endorsed the accuracy or adequacy of any securities offering or sales documents disseminated in connection with the stock.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-3-4

Stock issuance plan requirements

Sec. 4. A stock issuance plan must do the following:

- (1) Describe all significant terms of the proposed stock issuance and include:

- (A) any proposed stock order form; and
- (B) any agreement or other document defining or limiting the rights of stockholders.

- (2) Provide that the aggregate outstanding voting common stock owned or controlled by persons other than the mutual holding company at the close of the issuance must be less than fifty percent (50%) of the total number of shares of outstanding voting common stock. This provision may be omitted if the issuance will be conducted by a savings bank that was in the stock form when acquired by its mutual holding company parent if the savings bank is not a resulting savings bank or an

acquiree savings bank. Any stock that has no present or contingent voting rights may be issued by a savings bank subsidiary of a mutual holding company to persons other than the savings bank's mutual holding company, consistent with applicable law.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-3-5

Purchase of stock through loaned funds

Sec. 5. A savings bank shall not offer or sell any stock to any person or corporation whose purchase would be financed by funds loaned to the person or corporation by the savings bank or any of its affiliates, unless that borrowing is approved by the department.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-3-6

Amendment or termination of stock issuance plan

Sec. 6. If proposed as part of a reorganization plan, a stock issuance plan may be amended or terminated in the same manner as the reorganization plan under IC 28-6.2-2-11.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-3-7

Noncompleted stock issuance plan; termination; extensions

Sec. 7. A stock issuance plan will be terminated if not completed within the time specified in the plan unless an extension is:

- (1) requested in writing for good cause shown; and
- (2) approved in writing by the department.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-3-8

Stock issuance plan; discretionary provisions

Sec. 8. A stock issuance plan may provide the following:

- (1) The offering may be commenced concurrently with or after the mailing of any proxy statements to the members of the reorganizing savings bank and any acquiree savings bank if the stock issuance is part of a reorganization plan. The offering may be concluded before the required membership votes if the offer and sale of the stock is conditioned upon the approval of the reorganization plan and issuance plan by the members of the reorganizing savings bank and any acquiree savings bank.
- (2) Any stock not sold in the offering may be sold in any other manner provided in the stock issuance plan that is approved by the department in writing.
- (3) Instead of shares of stock, the savings bank may issue and sell units of securities consisting of stock and long-term warrants or other equity securities, in which event any reference to stock in this chapter applies to units of equity securities unless the context otherwise specifies or requires.
- (4) Purchases of stock by persons or entities acting in concert,

or by associates, may not exceed a limit established under the terms of the stock issuance plan.

As added by P.L.122-1994, SEC.101.